

2 December 2022
(Extension of time granted)

Tax Administration Unit
Personal and Indirect Tax, Charities and Housing Division
Treasury
Langton Cres
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(Submitted by email: taxadministrationconsultation@treasury.gov.au)

Public consultation on strengthening the ABN system

Justice Connect welcomes the opportunity to comment on the the *Treasury Laws Amendment (Measures for Consultation) Bill 2022: Strengthening the ABN system* (**exposure draft legislation**) and accompanying explanatory materials.

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

We have been serving the community for more than 25 years. We are a registered charity.

Our expertise – our Not-for-profit Law program

This submission draws on the experience of our specialist, national Not-for-profit Law program which provides free and low-cost legal assistance to not-for-profit organisations and social enterprises, many of which are registered charities or entitled to be registered charities. We handle more than 1,700 enquiries annually from a diverse range of groups and organisations, primarily small-medium sized and mostly volunteer run, the majority of which have an Australian Business Number (**ABN**).

Our submission

Overall, we support the proposed amendments to the [A New Tax System \(Australian Business Number\) Act 1999](#) (the **ABN Act**) and the intention to enhance the quality of ABN data and improve ABN holder engagement and compliance.

Our submission instead focuses on the implementation of the proposed changes and the impact on the not-for-profit sector, in particular:

- how the Registrar of the Australian Business Register (**the Registrar**) will administer section 14A of the exposure draft legislation (which includes an annual obligation to both notify the Registrar of the requirement for an ABN and to ensure the accuracy and completeness of information given to the Registrar),
- how the Registrar will educate the not-for-profit sector on the proposed requirements, and
- how the Registrar ought to exercise its powers to cancel the ABN of a not-for-profit organisation.

Our recommendations:

Recommendation 1: Section 14A of the exposure draft legislation must not result in additional reporting obligations for not-for-profit organisations. Instead, existing reporting infrastructure should be utilised to confirm an organisation's ongoing requirement for an ABN and the accuracy and completeness of information given to the Registrar.

Recommendation 2: ABNs of not-for-profit organisations should only be cancelled as a last resort. The Registrar should adopt a tailored regulatory approach for the not-for-profit sector that educates and supports organisations to comply.

[Recommendation 1: Existing reporting infrastructure must be utilised to administer section 14A of the exposure draft legislation](#)

Section 14A of the exposure draft legislation **must not result in additional reporting obligations for not-for-profit organisations.**

The not-for-profit sector is already overburdened by complex (and often duplicative) reporting obligations to multiple regulators and government agencies. This is why key government regulators have been taking steps for years to harmonise reporting and reduce red tape for not-for-profits. Consistent with this coordinated approach, **we urge the Registrar to take every available opportunity to assist not-for-profit organisations to keep their information up to date and not add reporting burden.**

The reporting infrastructure to collect the type of information required by section 14A of the exposure draft legislation already exists. This existing reporting infrastructure should be utilised to confirm an organisation's ongoing requirement for an ABN and to pass on the required information to the Registrar.

The below table sets out examples of how existing reporting infrastructure could be utilised to either collect the information required by section 14A of the exposure draft legislation, or at the very least prompt not-for-profit organisations to provide this information to the Registrar.

Type of not-for-profit organisation	Existing reporting infrastructure
Charities registered with the Australian Charities and Not-for-Profits Commission (ACNC)	<p>The information required by section 14A of the exposure draft legislation could be collected as part of the Annual Information Statement that all registered charities are required to submit. We note that having an ABN is an ongoing condition for charity registration. At the very least, a prompt to update this information could be included in the Annual Information Statement.</p> <p>If a registered charity (such as an Indigenous Corporation registered with Office of the Registrar of Indigenous Corporations (ORIC)) is exempt from submitting an Annual Information Statement, the information required by section 14A could be collected as part of the annual reporting obligations to the charity's primary regulator and passed on to the ACNC or the Registrar.</p>
Not-for-profits that are not registered with the ACNC and <i>are</i> required to lodge an income tax return (for example, because they are an unregistered charity)	The information required by section 14A of the exposure draft legislation could be collected as part of the Australian Tax Office Company Tax Return. At the very least, a prompt to update this information could be included in the Company Tax Return.
Not-for-profits that are not registered with the ACNC and are self-assessing as income tax exempt	The information required by section 14A of the exposure draft legislation could be collected as part of the new requirement to

	submit an annual self-review return. ¹ At the very least, a prompt to update this information could be included in the self-review return form.
Incorporated not-for-profits that are <i>not</i> registered with the ACNC, are <i>not</i> required to lodge an income tax return and are <i>not</i> eligible to self-assess as income tax exempt (for example because they are an unregistered charity that has a low income)	<p>The information required by section 14A of the exposure draft legislation could be collected as part of annual reporting obligations to regulators (for example, the Australian Securities and Investments Commission (ASIC), state-based regulators such as NSW Fair Trading or ORIC).</p> <p>Given this may not be possible, a prompt to update this information should be included as part of the regulator's reporting forms to assist the organisation to keep their ABN information up to date.</p>
Unincorporated not-for-profits that are <i>not</i> registered with the ACNC and are <i>not</i> required to lodge an income tax return (for example because they are an unincorporated and an unregistered charity that has a low income)	Identifying an existing reporting framework for this type of not-for-profit organisation is difficult. They may not be required to lodge an income tax return (because they fall below the taxable income threshold in a particular financial year) and are not required to report to a regulator (because they are unincorporated) but still might have need of an ABN. It is likely that these organisations are very small and resource poor. As outlined below, a more educative approach should be taken with these and all other not-for-profit organisations.

Recommendation 2: ABNs of not-for-profit organisations should only be cancelled as a last resort. The Registrar should adopt a tailored regulatory approach for the not-for-profit sector that educates and supports organisations to comply.

From our experience as a specialist service working with small-to-medium volunteer run not-for-profit organisations, many organisations have the best intentions, but resource

¹ See <https://www.ato.gov.au/General/New-legislation/In-detail/Other-topics/Not-for-profit/Enhancing-the-Transparency-and-Integrity-of-Not-for-Profits/>

constraints coupled with complex legal and reporting frameworks can result in organisations not being aware of, or fully compliant with, their obligations.

Given cancelling an ABN has real impacts on an organisation's ability to function (for example, having an ABN is an ongoing condition for charity registration), this action should be a last resort after all other compliance approaches have failed.

When exercising its powers to cancel an ABN under proposed new subsection 18(1)(d)-(e) of the exposure draft legislation, we urge the Registrar to adopt a compliance approach that [mirrors that of the ACNC](#). This could include consulting with the sector about the best way to communicate with organisations when there is an issue, sending a letter or making a phone call notifying the recipient of an intention to cancel the organisation's ABN, telling the organisation where they can find more information and assistance and giving the organisation an opportunity to respond to or rectify the situation.

We believe this approach is consistent with the policy objectives underpinning the exposure draft legislation – having an up to date Australian Business Register and the removal of ABN holders intentionally not complying with the law - **not** targeting not-for-profit organisations that have unintentionally slipped up on their reporting obligations.

For the reasons outlined above, **our overall recommendations are** that section 14A of the exposure draft legislation must not result in additional reporting obligations for not-for-profit organisations. Instead, existing reporting infrastructure should be utilised to confirm an organisation's ongoing requirement for an ABN and the accuracy and completeness of information given to the Registrar.

Furthermore, ABNs of not-for-profit organisations should only be cancelled as a last resort. The Registrar should adopt a tailored regulatory approach for the not-for-profit sector that educates and supports organisations to comply. We would be happy to discuss or expand on any of our comments. We agree to this submission being made public (with signatures redacted).

Yours sincerely,



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